Pentadbir Tanah Daerah Melaka Tengah v Mat Nayan bin Tak

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL APPLICATION NO M–08–189–95
MAHADEV SHANKAR, NH CHAN AND ZAKARIA YATIM JJCA
29 JUNE 1995, 16 NOVEMBER 1995

Civil Procedure *— Appeal — Leave to appeal — Appeal to Court of Appeal — Compensation under land acquisition — Value of compensation less than RM250,000 but above RM5,000 — Whether leave from the Court of Appeal was required — Courts of Judicature Act 1964 s 68(1)(a) — Land Acquisition Act 1960 s 49*

The respondent in this case was a landowner whose land had been acquired under the Land Acquisition Act 1960 ('the LAA'). Dissatisfied with the compensation awarded by the collector, he referred his claim for compensation to the High Court. The High Court judge increased the collector's award to RM44,964.71. The district land administrator sought leave to appeal against this increase. However, the respondent contended that although the amount of the High Court award was below RM250,000 no leave to appeal was required as s 68(1) of the Courts of Judicature Act 1964 ('the CJA') did not apply in this case. It was argued that the LAA was a self-contained piece of legislation which conferred the applicant an independent right of appeal, as long as the collector's award was above RM5,000. The question before the court was whether leave from the Court of Appeal was required to appeal in a land acquisition matter.

Held, allowing the application for leave to appeal:

(1) (Per **Mahadev Shankar JCA**) Section 4 of the CJA provided that in the event of inconsistency or conflict between CJA and any other written law other than the Constitution, the provisions of CJA shall prevail (see p 50C).

(2) (Per **Mahadev Shankar JCA**) Pursuant to s 67(1) of the CJA, the Court of Appeal shall have jurisdiction to hear appeals from any judgment or order of any High Court in any civil matter, subject to the CJA or any other written law regulating the terms and conditions upon which such appeals shall be brought (see p 50D–F).

(3) (Per **Mahadev Shankar JCA**) The right of appeal under s 49 of the LAA is the same right conferred by s 67(1) of the CJA, except that the category of permitted appellants under the LAA is wider since 'any person interested ... may appeal ...' (see p 50G).

(4) (Per **Mahadev Shankar JCA**) Whether or not leave should be obtained goes to the 'terms and conditions upon which such

appeals shall be brought'. The wording of s 49(2) of the LAA is consistent with s 67(1) of the CJA as both require the appeal to be brought within the time and in the manner provided, that is to say subject to the CJA and any other law relevant in that behalf (see p 50H).

(5) (Per **Mahadev Shankar JCA**) The issue of whether a right of appeal is absolute or conditional depends on the amount or value of the subject matter of the claim (exclusive of interest). Pursuant to s 68(1)(a) of the CJA, an appeal requires leave if the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000 (see p 49H).

(6) (Per **Mahadev Shankar JCA**) Leave to appeal in this matter was granted, since the amount was more than RM5,000 but less than RM250,000 (see p 51G).

(7) (Per **NH Chan JCA**) In a land acquisition matter, an interested party may appeal (pursuant to s 49(1) of the LAA) from the High Court to the Court of Appeal if the amount of the award is not below RM5,000. The Court of Appeal has jurisdiction (pursuant to s 67(1) read with s 4 of the CJA) to hear the appeal, save that leave of the Court of Appeal is required if the amount or value of the subject matter of the claim is below RM250,000 (pursuant to s 68(1)(a) of the CJA). In the instant case, since the award was above RM5,000 but below RM250,000, they were appealable from the High Court to the Court of Appeal but only with leave of the Court of Appeal (see pp 52I and 53A–B).

Per curiam:

(Per **Mahadev Shankar JCA**) Section 28(1) of the CJA does not affect the right of appeal given by s 49(1) of the LAA by virtue of the words, 'Subject to any other written law ....' which precede the rest of s 28(1) of the CJA (see p 51F).

[Bahasa Malaysia summary

Penentang dalam kes ini merupakan tuan punya tanah yang tanahnya telah diambil di bawah Akta Pengambilan Tanah 1960 ('APT'). Oleh kerana dia tidak berpuas hati dengan award pengutip, dia telah merujukkan tuntutannya untuk pampasan kepada Mahkamah Tinggi. Hakim Mahkamah Tinggi telah menambahkan award pengutip kepada RM44,964.71. Pentadbir tanah daerah telah memohon kebenaran untuk membuat rayuan bagi menentang penambahan itu. Walau bagaimanapun, penentang berhujah bahawa sungguhpun amaun award Mahkamah Tinggi adalah kurang daripada RM250,000 tiada kebenaran untuk merayu diperlukan kerana s 68(1) Akta Mahkamah Kehakiman 1964 ('AMK') tidak terpakai dalam kes ini. Pemohon juga berhujah bahawa APT merupakan suatu undang-undang yang lengkap yang memberi pemohon hak bebas untuk merayu jika award

A pengutip melebihi RM5,000. Soalan yang harus dipertimbangkan oleh mahkamah ialah sama ada kebenaran daripada Mahkamah Rayuan adalah diperlukan dalam perkara pengambilan tanah.

Diputuskan, membenarkan permohonan untuk kebenaran merayu:

B (1) (Oleh **Mahadev Shankar HMR**) Seksyen 4 AMK memperuntukkan bahawa dalam keadaan di mana terdapat tidak konsisten atau percanggahan antara AMK dan sebarang undang-undang secara bertulis selain daripada Perlembagaan, peruntukan AMK adalah terpakai (lihat ms 50C).

C (2) (Oleh **Mahadev Shankar HMR**) Mengikut s 67(1) AMK, Mahkamah Rayuan mempunyai bidang kuasa untuk membicarakan rayuan daripada sebarang penghakiman atau perintah Mahkamah Tinggi tentang sebarang perkara sivil, tertakluk kepada AMK atau sebarang undang-undang bertulis yang lain yang mengawal terma dan syarat atas mana rayuan harus dibuat (lihat ms 50D–F).

D (3) (Oleh **Mahadev Shankar HMR**) Hak merayu di bawah s 49 APT sama dengan hak yang dikurniakan oleh s 67(1) AMK, kecuali kategori perayu yang dibenarkan di bawah APT lebih meluas kerana 'mana-mana orang yang berkepentingan ... boleh merayu ...' (lihat ms 50G).

E (4) (Oleh **Mahadev Shankar HMR**) Sama ada kebenaran harus didapatkan bergantung kepada 'terma dan syarat atas mana rayuan harus dibuat.' Penyusunan kata s 49(2) APT adalah konsisten dengan s 67(1) AMK kerana kedua-duanya menghendaki rayuan dibuat dalam masa dan mengikut cara yang diperuntukkan, iaitu

F tertakluk kepada AMK dan undang-undang yang relevan pada perkara tersebut (lihat ms 50H).

(5) (Oleh **Mahadev Shankar HMR**) Isu sama ada hak rayuan adalah mutlak atau bersyarat bergantung kepada amaun atau nilai hal perkara tuntutan (tanpa mengira faedah). Mengikut

G s 68(1)(a) AMK, suatu rayuan memerlukan kebenaran jika amaun atau nilai hal perkara tuntutan (tanpa mengira faedah) adalah kurang daripada RM250,000 (lihat ms 49H).

(6) (Oleh **Mahadev Shankar HMR**) Kebenaran untuk merayu dalam perkara ini dibenarkan oleh kerana amaun yang terlibat adalah daripada RM5,000 tetapi kurang daripada RM250,000

H (lihat ms 51G).

(7) (Oleh **NH Chan HMR**) Dalam perkara yang berkenaan dengan pengambilan tanah, pihak yang mempunyai kepentingan boleh merayu (mengikut s 49(1) APT) dari Mahkamah Tinggi ke Mahkamah Rayuan jika amaun award itu tidak kurang daripada

I RM5,000. Mahkamah Rayuan mempunyai bidang kuasa (mengikut s 67(1) dibaca dengan s 4 AMK) untuk mendengar rayuan tersebut, tetapi kebenaran merayu dari Mahkamah Rayuan

diperlukan jika amaun atau nilai hal perkara tuntutan itu adalah kurang daripada RM250,000 (mengikut s 68(1)(a) AMK). Dalam kes ini, oleh kerana award adalah melebihi RM5,000 tetapi kurang daripada RM250,000, rayuan boleh dibuat dari Mahkamah Tinggi ke Mahkamah Rayuan, tetapi hanya dengan kebenaran Mahkamah Rayuan sahaja (lihat ms 52I dan 53A–B).]

Per curiam:

(Oleh **Mahadev Shankar HMR**) Seksyen 28(1) AMK tidak menjejaskan hak rayuan yang diberi oleh s 49(1) APT memandangkan terdapatnya kata-kata, 'Tertakluk kepada mana-mana undang-undang bertulis ...' yang mendahului s 28(1) AMK (lihat ms 51F).

Notes

For cases on leave to appeal, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 478–506.

Cases referred to

Chong Kueng Ying and Ors v Lovis Lavagna [1972] 1 MLJ 180
Dr Ng Teng Kok & Ors v Cheah See Kian & Ors [1987] 2 MLJ 245
Foo Sey Koh & Ors v Chua Seng Seng & Ors [1986] 1 MLJ 501
Wong Kon Sang v Chang Litho Press Ltd [1968] 2 MLJ 234

Legislation referred to

Courts of Judicature Act 1964 ss 4, 12(2), 28(1), 67(1), 68(1)(a)
Land Acquisition Act 1960 ss 49(1), (2)
Subordinate Courts Act 1948 s 70(3)

Appeal from: Land Reference No 15–126–93 (High Court, Melaka)

Abdul Rahman Putra (Senior Federal Counsel), *Meor Hashim* (Federal Counsel) *(State Legal Adviser Malacca)* for the applicant.
Yusof Rahmat (Kesavan & Associates) for the respondent.

Cur Adv Vult

29 June 1995

Mahadev Shankar JCA: This is an application for leave to appeal from a decision of the High Court concerning the proper compensation payable under the Land Acquisition Act 1960 ('the Acquisition Act').

The subject land is part of Lot 548 in the district of Melaka Tengah. The respondent was dissatisfied with the award of the collector, and had the claim for compensation referred to the High Court. On 25 March 1995, the judge of the High Court at Melaka increased the collector's award by 174.44% to RM44,964.71.

Against this increase, the applicant seeks leave for appeal.

In the appeal (M–08–197–95) which immediately preceded this one, the learned senior federal counsel had mistakenly applied for leave. The High Court award was in excess of RM250,000. Clearly, no leave was necessary. So, at the hearing of the motion, the learned senior federal counsel withdrew his prayer for leave and sought an extension of time to file the notice of appeal. The respondent objected, citing *Chong Kueng Ying & Ors v Lovis Lavagna* [1972] 1 MLJ 180, where the Federal Court held that the mistake of a legal advisor is not sufficient ground for granting leave. Consequently, we dismissed the application with costs. Seven other cases which were similar were also dismissed.

The present application for leave to appeal was then called up for disposal. The amount of the High Court award here is well below RM250,000. But, the respondent's counsel strenuously contended that even here, no leave was required because the Acquisition Act gave the appellant an unqualified right to appeal if the collector's award was above RM5,000 and s 68(1) of the Courts of Judicature Act 1964 ('the CJA') did not apply.

Section 49 of the Acquisition Act reads:

> 49(1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were pursuant to section 3 may appeal from a decision of the Court to the Supreme Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom unless the amount awarded by the Court exceeds five thousand ringgit.
>
> (2) Every appeal under this section shall be presented within the time and in the manner provided for appeals in suits in the High Court:
>
> Provided that the time within which an appeal may be presented shall only be capable of enlargement by order of a Court in such special circumstances as the Court may think fit.
>
> (3) (Omitted).

Reference was also made to Salleh Buang, *Compulsory Land Acquisition* at p 19 and N Khublall, *Compulsory Land Acquisition Singapore and Malaysia* (2nd Ed) at p 269. These textbooks merely paraphrase the section and do not carry the matter further.

Section 68(1)(a) of the CJA reads:

> 68(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

The argument was that since s 68(1)(a) referred to a 'claim' and s 49(1) of the Acquisition Act referred to 'the amount awarded', the two statutes had different things in mind and the Acquisition Act was, therefore, a self-

contained piece of legislation which conferred an independent right of appeal for which no leave was required.

Passages were then cited from *Words and Phrases — Legally Defined* (3rd Ed) Butterworths, the *Shorter Oxford English Dictionary* and *Black's Law Dictionary* to demonstrate what the words 'award' and 'claim' meant. We did not find these definitions helpful.

Section 4 of the CJA reads:

> 4 Provision to prevent conflict of laws.
>
> In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

Section 67 of the CJA reads:

> 67 Jurisdiction to hear and determine civil appeals.
>
> (1) The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.
>
> (2) The Court of Appeal shall have all the powers conferred by section 24A on the High Court under the provisions relating to references under order of the High Court.

Thus, by whatever name a decision of the High Court in any reference from the collector is called, s 67 clearly provides a right of appeal to the Court of Appeal. Matters come up to the High Court from the collector under Pt V of the Acquisition Act not by way of appeal, but by way of reference. In other words, the jurisdiction of the High Court here is a statutory original jurisdiction. Fresh evidence is usually taken at these hearings. The right of appeal under s 49 of the Act is the same right conferred by s 67(1) of the CJA except that the category of permitted appellants under the Act is wider since 'any person interested ... may appeal ...'.

Whether or not leave should be obtained goes to the 'terms and conditions upon which such appeals shall be brought'. As to this, we do not find the wording of s 49(2) of the Acquisition Act in any way inconsistent with s 67(1) of the CJA. Both require the appeal to be brought within the time and in the manner provided, that is to say subject to the CJA and any other law relevant in that behalf.

Section 12(2) of the Acquisition Act reads:

> The Land Administrator shall also enquire into the respective interests of all persons claiming compensation or who ... are entitled to compensation ...

References to the High Court arise when these people claim for an amount by way of compensation in excess of that which has been awarded by the land administrator.

Thus, the issue of whether right of appeal is absolute or conditional depends not on a subjective appreciation of what the claimant thinks his property is worth but 'the amount or value of the subject-matter of the claim (exclusive of interest)...'.

This issue is easily resolved where the claim is a money claim (see *Wong Kon Sang v Chang Litho Press Ltd* [1968] 2 MLJ 234, where the sessions court was held to be seized of jurisdiction to try an action even if the value of the counterclaim exceed it). So also in *Foo Sey Koh & Ors v Chua Seng Seng & Ors* [1986] 1 MLJ 501, where I held that a money claim for principal and interest which came to less than RM25,000 should be filed in the sessions court. I touched upon the problems attendant on claims for unliquidated damages which could be thought to be worth more than RM25,000. A similar problem arose in *Dr Ng Teng Kok & Ors v Cheah See Kian & Ors* [1987] 2 MLJ 245, where s 70(3) of the Subordinate Courts Act 1948 was considered and it was held that the issue of jurisdiction was to be determined solely by the amount of the rent claimed and not the *mesne* profits which could also be awarded upon judgment

These cases are not quite in point on the approach the court should adopt where the parties disagree as to the real monetary value of the subject matter of the claim, nor do we need to decide the matter here.

Since there are 69 other applications before us today whose fate hinge on this one, we feel obliged to comment on s 28(1) of the CJA which precludes appeals from subordinate courts in any civil cause or matter where the amount in dispute or the value of the subject matter is RM10,000 or less except on a question of law.

It is the opinion of this court that this section does not affect the right of appeal given by s 49(1) of the Act by virtue of the words, 'Subject to any other written law ...' which precede the rest of s 28(1) of the CJA.

Accordingly, we granted leave to appeal in this matter and in the other 69 matters which followed, since in every case the amount was more than RM5,000 but less than RM250,000. We gave the applicants two weeks to file the notice of appeal and directed that the costs be treated as costs in the cause or, to put it correctly, to abide the result of the appeal.

29 June 1995

NH Chan JCA: I have had the advantage of reading the judgment of my learned brother Mahadev Shankar JCA in draft, and I agree that leave should be granted to appeal from the decision of the High Court to the Court of Appeal in this matter under the Land Acquisition Act 1960 ('the Acquisition Act'). The question is whether leave from the Court of Appeal is required to appeal in a land acquisition matter.

Section 49(1) of the Act reads:

> 49(1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Supreme Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom unless the amount awarded by the Court exceeds five thousand ringgit.

Section 67(1) of the Courts of Judicature Act 1964 ('the CJA') reads:

> 67(1) The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate juridisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.

Put shortly, s 49(1) of the Acquisition Act says that any interested person may appeal from the decision of the High Court to the 'Supreme Court' but according to the proviso, there will be no appeal if the amount of the award is less than RM5,000. And s 67(1) of the CJA says that the Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court.

Although s 49(1) of the Act says that an appeal from the High Court is to the Supreme Court (now named Federal Court), nevertheless it is quite plain that an appeal only lies to the Court of Appeal (s 67(1) of the CJA) which has jurisdiction to hear appeals from the High Court (and not to the Federal Court which jurisdiction is to hear appeals from the Court of Appeal). See s 4 of the CJA which reads:

> 4 In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

However, the CJA also provides in s 68(1)(a) that an appeal requires leave if the amount or value of the subject matter of the claim is less than RM250,000. Of course, no leave is required if the amount or value exceeds that amount. The section reads:

> 68(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

The upshot of all this is that, in a land acquisition matter, an interested party may appeal (s 49(1) of the Act) from the High Court to the Court of Appeal if the amount of the award is not below RM5,000 and the Court of Appeal has jurisdiction (s 67(1) read with s 4 of the CJA) to hear the appeal, save that leave of the Court of Appeal is required if the amount or

A value of the subject matter of the claim is below RM250,000 (s 68(1)(a) of the CJA).

In the instant case and in the other 69 cases, since the award in every case was above RM5,000 but below RM250,000, they are appealable from the High Court to the Court of Appeal but only with leave of the Court of
B Appeal.

16 November 1995

Zakaria Yatim JCA: I have read the judgments of my learned brothers NH Chan JCA and Mahadev Shankar JCA and I entirely agree with their
C judgments.

Application allowed.

Reported by Ng Kian Pin

D

E

F

G

H

I